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ATTORNEY FOR APPELLANT:

NANCY A. MCCASLIN
McCaslin & McCaslin
Elkhart, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

A. S.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 20A03-0611-JV-555
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0606-JD-596

May 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent A.S. appeals the juvenile court's true finding that he committed an act that would have been Criminal Mischief,[1] a class B misdemeanor, had it been committed by an adult. A.S. argues that the evidence is insufficient to support the adjudication. He also contends that the juvenile court erroneously ordered him to pay a probation administrative fee and monthly probation user fees without inquiring into his parents' ability to pay said fees. We find, and the State concedes, that the juvenile court should have inquired into A.S.'s parents ability to pay the probation fees, and we remand this matter for a hearing on that issue. In all other respects, we affirm the judgment of the juvenile court.

FACTS

On April 9, 2006, Daniel Creager was a tenant at 626 Freemont Street, an Elkhart County home owned by Shannon Nicodemus. A.S. lived in a home on the next block and his backyard was close to Creager's backyard. A.S. pointed a BB gun out of an upstairs window of his home and took several shots at Creager's home, shattering a glass door. Cindy Kosloski, A.S.'s neighbor, observed A.S. shoot the BB gun. She knew that the shooter was A.S. because she saw his head and was familiar with the shape of his head.

On June 13, 2006, the State filed a petition alleging that A.S. had committed a delinquent act that would have been class A misdemeanor criminal mischief had it been committed by an adult. At a hearing on October 16, 2006, the State amended the delinquency petition to allege class B, rather than class A, misdemeanor criminal mischief

[1] Ind. Code § 35-43-1-2.

because the property damage totaled less than $250. Following that hearing, the juvenile court found A.S. to be a delinquent child. On October 31, 2006, the juvenile court ordered supervised probation. It also ordered A.S. to pay a probation administrative fee of $100 and a monthly probation user fee of $15 without first inquiring into his parents' ability to pay those fees. A.S. now appeals.

DISCUSSION AND DECISION

A.S. first argues that the evidence is insufficient to support the adjudication. When the State seeks to have a juvenile adjudicated a delinquent, it must prove every element of the offense beyond a reasonable doubt. C.T.S. v. State, 781 N.E.2d 1193, 1200-01 (Ind. Ct. App. 2003). We neither reweigh the evidence nor judge the credibility of witnesses, looking instead to the evidence and the reasonable inferences that may be drawn therefrom that support the true finding. Id. We will affirm the adjudication if evidence of probative value exists from which the factfinder could have found the juvenile guilty beyond a reasonable doubt. Id.

To be successful on the delinquency petition herein, the State was required to prove beyond a reasonable doubt that A.S. knowingly damaged Nicodemus's property without consent, causing pecuniary damages of less than $250. I.C. § 35-43-1-2. It is undisputed that A.S. did not have consent to damage the property, which sustained less than $250 in damages.

A.S. argues that there is insufficient evidence establishing the identity of the shooter. The State presented the testimony of Kosloski to establish that A.S. was the shooter.

Specifically, Kosloski testified that she had "no doubt" and was "pretty sure" that the shooter was A.S. Tr. p. 16, 18. A.S. directs our attention to other evidence in the record calling Kosloski's identification of him as the shooter into question, but this is merely a request that we reweigh the evidence and judge the credibility of witnesses—a practice in which we do not engage when evaluating the sufficiency of the evidence supporting a juvenile adjudication. We find, therefore, that the evidence was sufficient to support the juvenile court's true finding of delinquency.

A.S. also argues that there are two material variances between the factual allegations contained in the delinquency petition and the evidence presented at the hearing. A variance, which is not necessarily fatal, is an essential difference between pleading and proof. Mitchem v. State, 685 N.E.2d 671, 677 (Ind. 1997). To award relief on the basis of a variance, it must have either misled the defendant in the preparation and maintenance of his defense with resulting harm or prejudice or left the defendant vulnerable to double jeopardy in a future criminal proceeding covering the same event, facts, and evidence. Winn v. State, 748 N.E.2d 352, 356 (Ind. 2001). A.S. failed to object to the alleged variances at trial and has consequently waived the issue on appeal. Childers v. State, 813 N.E.2d 432, 436 (Ind. Ct. App. 2004).

Waiver notwithstanding, we note that the delinquency petition alleged that Kosloski observed A.S. and two other juveniles shooting weapons at the time of the incident. At trial, however, Kosloski testified only about A.S. and did not refer to the other two boys. Neither the prosecutor nor A.S.'s attorney questioned Kosloski about the other juveniles who were

allegedly present at the scene. We find that the references in the delinquency petition concerning the other two boys are entirely superfluous to the allegations against A.S. We also note that A.S. has not established that he was prejudiced or harmed by the variance. Under these circumstances, we find that the variance regarding the other boys' presence at the scene was not fatal to the adjudication.

A.S. also argues that a variance occurred when the State mistakenly asked Nicodemus whether he owned property at 622, as opposed to 626, Fremont Street, and Nicodemus responded affirmatively. Later in the hearing, however, Nicodemus testified that the property that was damaged as a result of A.S.'s actions was the home that Nicodemus rented to Creager. Creager, in turn, testified that he lived at 626 Fremont Street. It is evident that any confusion over the address of the damaged property was the oral equivalent of a scrivener's error. This variance was inconsequential and A.S. has not, and cannot, establish that he was harmed or prejudiced thereby.

Finally, A.S. argues, and the State concedes, that the trial court erroneously ordered A.S. to pay a probation administration fee and probation user fees without first inquiring into his parent's ability to pay. See A.E.B. v. State, 756 N.E.2d 536, 544 (Ind. Ct. App. 2001) (remanding for indigency hearing to determine juvenile's ability to pay probation fees). Consequently, we remand this matter with instructions to hold a hearing on the ability of A.S.'s parents to pay the fees in question.

The judgment of the juvenile court is affirmed and remanded with instructions to hold an indigency hearing.

FRIEDLANDER, J., and CRONE, J., concur.